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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,283	08/07/2001	John Friend	05545P003	6146

7590 11/22/2005

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EXAMINER

LAZARO, DAVID R

ART UNIT

PAPER NUMBER

2155

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/924,283	Applicant(s) FRIEND ET AL.	
	Examiner David Lazaro	Art Unit 2155	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None
Claim(s) objected to: None
Claim(s) rejected: 1-4, 8, 19-23, 25 and 27-30
Claim(s) withdrawn from consideration: _____


AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER


David Lazaro
November 14, 2005

Continuation Sheet

Continuation of 11:

Applicant argues on page 8, applicants argue - *"However, nowhere does Przybysz disclose or suggest that a batch transaction update is based on when the batch transaction update reaches a predetermined size, as recited by claim 1. A number of updates is not equivalent to a predetermined size."*

Examiner's response - MPEP 2111 states that claims are to be given their broadest reasonable interpretation. As such, the examiner disagrees that the number of updates is not equivalent to a predetermined size. In Przybysz Col. 4, lines 51-55, a threshold number of updates will inherently have a property of a predetermined size as the buffer 250 and the updates are of a finite size.

Furthermore, the claim language states "**one or more** of the following batch processing parameters:" (emphasis added). Applicants' arguments suggest that Przybysz, at the very least, teaches the parameter "a predetermined number of message transaction updates have accrued". Therefore, the alternative condition presented in the claims is met and the teachings of Multer in view of Przybysz are within the scope of the claimed subject matter.

Continuation of 13: Explanation of how the new or amend claims would be rejected.

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Each independent claim is essential rejected based on the logic of the rejection of claims 6 and 7 as present in the office action mailed 09/07/05. The rejections of the remaining dependent claims are adjusted according.

Summary:

Claims 1, 2, 4, 8, 19-21, 23, 25, 27, 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Multer in view of Przybysz.

Claims 3, 22, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Multer in view of Przybysz and Herrod.